

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-290

December 11, 2000

BANGOR HYDRO-ELECTRIC COMPANY  
Request for Approval of Reorganization  
And of Affiliated Interest Transactions in  
Connection With the Provisioning of  
Certain Maintenance, Construction and  
Engineering Services

ORDER APPROVING  
STIPULATION

WELCH, Chairman; NUGENT, and DIAMOND, Commissioners

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**I. SUMMARY**

On October 30, 2000, Bangor Hydro-Electric Company (BHE) filed a Stipulation, attached hereto as Appendix A, in the above matter on behalf of BHE and the Public Advocate.<sup>1</sup> Under the Stipulation, the stipulating parties agree that the Commission should approve (1) BHE's Petition for Reorganization to form the Bangor Line Company (Bangor Line), (2) the Support Services Agreement between BHE and Bangor Line, and (3) BHE's cost manual. The Stipulation also provides that BHE's participation in Bangor Line Company shall be consistent with the requirements of Chapter 820. Finally, the Stipulation includes a methodology for determining the fee that Bangor Line Company will pay to BHE for the use of BHE's name. In this Order, we approve the Stipulation and accordingly approve BHE's petition for approval of reorganization pursuant to 35-A M.R.S.A. § 708 and affiliated transactions pursuant to 35-A M.R.S.A. § 707.

**II. PROCEDURAL HISTORY**

On March 27, 2000, BHE filed a Petition for Reorganization and Exemptions Pursuant to 35-A M.R.S.A. § 708 and for Affiliated Interest Transaction Approvals and Exemptions Pursuant to 35-A M.R.S.A. § 707. In its petition, BHE asked that the Commission authorize BHE to form a separate subsidiary in which to provide maintenance, construction and engineering (MC&E) activities. Alternatively, BHE requested that the Commission determine that the services at issue are core services, and are therefore not subject to the requirements of Chapter 820. After the issuance of a Notice of Proceeding, the

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<sup>1</sup> The other intervenors in this case, Central Maine Power Company and S/L Construction Company, did not participate in Phase II of this proceeding. Neither of these intervenors signed the Stipulation or objected to it.

Public Advocate, Central Maine Power Company (CMP) and S/L Construction (S/L) intervened.

The Examiner bifurcated the case so that the Commission could first consider whether the activities at issue are core within the meaning of Chapter 820 of our rules. In our August 1, 2000 Order in this case, we determined that the activities were non-core within the meaning of Chapter 820 of our rules.

Phase II of this case focused on BHE's cost allocation manual. In earlier cases, we had deferred consideration of whether the manual complies with the requirements of Chapter 820. In each case, the Commission determined that affiliate use of Bangor Hydro support services would be so limited that resolution of the cost allocation methodology could be deferred. However, in this case, BHE asked the Commission Advisory Staff (Advisors) to focus on the cost allocation manual to ensure that it was in compliance with Chapter 820. Accordingly, the Commission held three technical conferences to resolve questions relating to the cost allocation methodology used in the manual. The Public Advocate, the Commission's Advisors and BHE participated in these conferences. BHE also responded to several oral data requests issued by the Advisors. On October 5, 2000, BHE submitted a final version of the cost manual, which incorporated a number of changes suggested by the Advisors. On October 30, 2000, BHE filed a Stipulation on behalf of itself and the Public Advocate. On November 29, 2000, BHE filed a revised Support Services Agreement at the Examiner's request to conform the Support Services Agreement to the Stipulation.

### **III. THE STIPULATION**

The Stipulation states the stipulating parties' agreement that the Commission should approve:

1. the formation of Bangor Line Company as a wholly owned subsidiary of BHE;
2. the Support Services Agreement;
3. the cost manual; and
4. the methodology for determining the payment by Bangor Line to Bangor Hydro for Bangor Line's use of BHE's name.

The stipulating parties also agree that all discovery and transcripts in the case should be part of the record for the purpose of Commission consideration of the Stipulation. In addition, the Stipulation provides that BHE's participation in Bangor Line shall be consistent with the requirements of Chapter 820 and that all costs, revenues and investments and all profits and losses associated with or

resulting from BHE's participation in Bangor Line Company shall be accounted for "below the line" except that the payment due to BHE from Bangor Line Company for Bangor Line's use of BHE's name will be accounted for "above the line." Finally, the Stipulation states the stipulating parties' agreement that if Bangor Line uses BHE's name, it shall pay a fee to BHE equal to 2% of Bangor Line's pre-tax net income for a period of six years beginning on the date Bangor Line first makes use of BHE's name.

#### IV. Discussion

We find that the provisions of the Stipulation are reasonable. Specifically, as discussed below, we find the cost allocation manual and the provision regarding payment for the affiliate's use of BHE's name meet the requirements of Chapter 820 while also taking into account the nature and scope of the activities at issue.

##### A. Cost Manual

The Advisors worked with BHE to develop procedures that would properly reflect the requirements of Chapter 820 while recognizing that the scope of BHE's non-core activities still remains relatively limited. The resulting cost manual, attached hereto as Appendix B, contains provisions for adjusting the methodology if the level of BHE's participation in its non-core activities increases significantly. For example, the cost manual contains the following provision with regard to updating of cost allocation rates relating to true-ups and to changes in the methodology for determining the employee benefits overhead percentage:

The Company utilizes estimated annual expense figures at the beginning of each fiscal year to develop new cost allocation rates under this Cost Manual. The Company shall prepare a year end comparison of actual expenses with estimated expenses in any year in which the Company's non-core affiliates have been charged more than \$100,000 under the Cost Manual for use of the Company's resources (i.e. excluding charges made based on tariff or market rates).

The Company's methodology for determining the employee benefits overhead percentage does not take into consideration the fact that executives receive different employee benefits than non-executives (supplemental executive retirement plan and executive bonuses). Executives working on non-core activities receive an allocation of employee benefits at the same rate as non-executives. This methodology has not been modified because historically BHE executives have not spent considerable time on non-core projects. In connection with the annual year-end comparison of actual expenses and estimated expenses, actual expenses will be calculated utilizing the separate executive

employee benefit overhead (applied to all executives' labor charged to non-core projects).

The Company shall charge or give credit to such affiliates for any discrepancies determined during the true-up comparison in excess of \$25,000.

Cost Manual at 10.

The Cost Manual also imposes certain reporting requirements in addition to those required by Chapter 820. Specifically BHE is required to report:

- a. Whether (i) the use of BHE facilities or segments thereof significantly encompass non-core activities or (ii) new facilities were leased, purchased or constructed for use by a non-core activity;
- b. Total overtime labor dollars charged to non-core activities; and
- c. Total executive labor dollars charged to non-core activities.

In connection with item (c), to the extent executive labor dollars charged to non-core activities exceeds \$25,000 annually for three consecutive calendar years, the company will file with the MPUC its reasoning for not implementing a separate employee benefit overhead for the Company's executives.

Cost Manual at 11. We conclude that the true-up and reporting requirements provide appropriate mechanisms to change the methodology as necessary to reflect possible changes in the nature and scope of BHE's non-core activities.

B. Payment for Use of BHE's Name

The Stipulation provides for a very minimal payment for the use of BHE's name. The payment of 2% of Bangor Line's pre-tax net income for a period of six years may result in no payment at all if Bangor Line is not profitable. We conclude that this provision is reasonable because of the minimal projected use of BHE's name by its affiliate. As noted in the Stipulation, we previously approved, in Docket No. 97-796, the same payment arrangement for Bangor Gas's use of BHE's name. In the Bangor Gas case, we approved a stipulation with this minimal payment because BHE represented that Bangor Gas would make only a minimal use of BHE's name. In this case, BHE represented that it expected Bangor Line's use of BHE's name to be limited to:

1. Use of BHE name on Newco<sup>2</sup> letterhead, indicating that Newco is a subsidiary of BHE.
2. Possible link to or become a part of BHE's website.
3. Reference to BHE as an affiliate in any responses to bids.
4. Although no advertising brochures are expected to be used, the Company wishes to leave open the possibility that a brochure could be created and used which might refer to BHE as a parent of Newco.

#### BHE Response to Bench Oral Data Request No. 2.

In the September 27, 2000 technical conference, BHE clarified that it expected its use of BHE's name in the above context to be minimal and not pronounced. BHE's witness provided his view of what the words "minimal" or "not pronounced" means:

My intent is I want the name recognition for the new company. That's the one that's going [to] be submitting bids as time goes on and so forth. So primarily that's what you're after is people recognizing the new company; and I'm not a web designer or brochure designer, but I'd certainly have my input. What I'm trying to push here is the new company's name and down at the bottom yes, it is affiliated with Bangor Hydro-Electric. Do I want that in big letters and that's what the focus is? No. That's not the intent at all. What you really want to sell and get people to recognize is your new company's name.

#### Tr. D-19.

Based on the information provided by BHE in its data responses and at the September 27 technical conference, we conclude that the expected use of BHE's name by Bangor Line is minimal and that therefore the minimal payment provided for under the Stipulation is reasonable. We expect Bangor Hydro to report to us if the extent of Bangor Line's use of BHE's name increases beyond the minimal use described in the record of this case. Upon such a report, we may reopen this case to determine whether the amount of the annual payment should be increased.

#### C. The Support Services Agreement

The Support Services Agreement, appended hereto as Appendix C, requires that "all charges by BHE to Bangor Line for the use of BHE's resources involving an allocation of BHE's costs shall be made in accordance with the cost manual." Support Services Agreement at 1. It also incorporates the agreement

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<sup>2</sup> Newco refers to Bangor Line.

set forth in the Stipulation for the use by Bangor Line of BHE's name. We find the Support Services Agreement is not adverse to ratepayer's interest, see 35-A M.R.S.A. § 707(3), and therefore we approve it.

## V. STANDARDS FOR APPROVING STIPULATIONS

In *Consumers Maine Water Company, Proposed General Rate Increase of Bucksport and Hartland Divisions*, Docket No. 96-739, Order Approving Stipulation (July 3, 1997), we summarized our criteria for approving stipulations:

- 1) whether the parties joining the Stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- 2) whether the process that led to the Stipulation was fair to all parties; and
- 3) whether the stipulated result is reasonable and is not contrary to legislative mandate.<sup>3</sup>

*Id.* at 2 (citations omitted).

We conclude that the Stipulation meets these criteria. We note in particular that the Stipulation meets the requirements of Chapter 820, as discussed above, and that the Public Advocate has agreed to its terms. Finally, no party has objected to the Stipulation.

Accordingly, it is

### ORDERED

1. That the Stipulation filed on October 30, 2000 and attached hereto is approved consistent with this Order.
2. That the Cost Manual filed on October 5, 2000 is approved.
3. That the Support Services Agreement filed on November 29, 2000 is approved.
4. That all data requests, responses, and transcripts are admitted into the record in this case.

Dated at Augusta, Maine, this 11<sup>th</sup> day of December, 1999.

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<sup>3</sup>In addition, we recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *Id.*

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

**NOTICE OF RIGHTS TO REVIEW OR APPEAL**

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.